



# **Naturalization & Citizenship**

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**Immigration Intervention Project  
Sanctuary for Families**

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- USCIS/CIS = United States Citizenship and Immigration Services
- USC = United States Citizen
- LPR = Lawful Permanent Resident (“green card”)
- INA = Immigration and Nationality Act
- Natz = Naturalization

# Ways of Obtaining US Citizenship

- Birth in the US
- Acquisition of citizenship at birth through USC parent
- Derivation of citizenship when a parent naturalizes
- Certificate of citizenship for child (of USC) born and residing abroad (INA Section 322)
- Naturalization

## **Benefits of US Citizenship**

- Vote in Federal elections
- Travel with a U.S. Passport
- Run for office where citizenship is required
- Serve on a jury
- Become eligible for federal and certain law enforcement jobs
- Obtain certain state and federal benefits not available to noncitizens
- Obtain citizenship for minor children born abroad
- Expand and expedite ability to bring family members to the United States

- **Form N-400**
- **Current edition dated 09/17/19** (edition date shown in lower left corner of each page)

- Process by which foreign national can become a US Citizen
- Need to rule out acquisition/derivation before proceeding with Natz application because USCIS does not have jurisdiction to naturalize someone who is already a citizen
  - Watch for applicants with USC parents! If parent became a USC before the applicant turned 18, applicant may have derived citizenship

## **Basic Process**

1. Meet Eligibility Requirements
2. Complete and File Form N-400
3. Attend Biometrics Appointment (fingerprints and photo)
4. Attend Interview and Pass English/civics exam
5. Take Oath of Allegiance



# Requirements for Naturalization

INA § 316; 8 CFR § 316.2

- At least 18 years old
- Lawful permanent resident (LPR)
- 5 or 3 years continuous residence\*
- Physical presence for half of the 3 or 5 years
- Resided for 3 months in state or USCIS district where application is filed
- Good moral character (GMC)\*\*
- Knowledge of English & US history/civics
- Take oath of allegiance to US

\*3 years if married to and living with US citizen for the last three years, VAWA exception

\*\* GMC is a complicated and vast concept involving analysis of the applicant's entire life, including criminal, personal, tax, immigration history, etc.





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**$\geq 18$  years of age**

- 18 years old
  - At least 18 years of age (unless age requirement waived due to military involvement)

- Applicant must be a Lawful Permanent Resident (green card)
- Conditional LPR may be eligible to file for natz if s/he has accrued requisite residence period even if condition not yet lifted
  - Applications will be adjudicated together
- When person honorably served in military during time of war or declared hostilities, LPR status not required at time of application

## 5 Year Rule

- Generally need to have held lawful permanent resident status for 5 years



## **Exceptions to 5 year Rule**

- Special rule for spouses of USC. Can apply after 3 years if:
  - LPR for 3 years
  - Married and living in marital union with USC spouse (up to time of oath).
  - Spouse must have been USC for at least 3 years

## Exceptions to 5 year Rule

- Also 3 year rule for VAWA grantees (obtained LPR status as battered spouse/child of USC, including Conditional LPRs who removed condition based on abuse) INA § 319
  - Part I, Information About Your Eligibility, check box E for “other.” As an explanation, write "Have been an LPR for at least three years (VAWA I.N.A § 319(a)).“
  - Living in marital union not required
  - Look for category IB1 or IB6 (or I-751 approval indicating BSW)



## **Continuous Residence & Absences**

- Must have (3/5 years) of continuous residence in the US as an LPR
  - Can apply 90 days before
    - 4 years 9 months
    - 2 years 9 months if married to U.S. citizen for that entire period

## **Continuous Residence & Absences**

- 1 year absence breaks continuous residence
  - have to wait 4 years and 1 day from return to US.
  - Or two years and 1 day if applying under 3 year rule
- Absences > 6 mo but < 1 yr create a presumption of breaking continuous residence.
  - Overcome presumption by showing kept home & employment in US, family ties in US, not employed abroad.
  - If USCIS determines continuous residence was broken, applicant must wait 3 or 5 years.

## **Continuous Residence & Absences**

**Example: George left the U.S. on 05/01/2019 and returned on 05/02/2020. He broke continuous residence and cannot apply until:**

- 05/03/2024 generally (4 years and 1 day after return)
- 05/03/2022 if married to a U.S. citizen (2 years and 1 day after return)



## **Continuous Residence & Absences**

Example: George left the U.S. on 05/01/2019 and returned on 11/02/2019. He must overcome presumption of breaking continuous residence. Some evidence he could present:

- Apartment lease and proof of rent payments
- Insurance he maintained (car, apartment, etc.)
- Tax returns filed
- Letter from employer who held job for him
- School transcripts or enrollment verification
- Be creative!

## **Abandonment of Permanent Residence**

- Watch out for abandonment issues. Matter of Kane, 15 I&N 258 (BIA 1975).
  - Long absences (>6 months) can create a presumption that abandoned residence & trigger deportation proceedings
  - Reentry permit (I-131) is an option for those that need to be absent for long periods (due to school, work, etc)
  - If emergencies developed, need to show did not intent to abandon residence (documenting emergency, show kept ties to US, employment, home, family ties, etc)
  - Totality of circumstances and intent are key



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## **Physical Presence**

**INA § 316 & 8 CFR § 316.2(a)(4)**

- **Must have been physically present in the US for half of the 5 year period (at least 913 days in US)**
- **If applying under 3 year rule for spouses of USC or VAWA grantees, then half of the 3 years (at least 548 days in US)**



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## **Physical Presence**

Must include every trip outside of the US in the last 3/5 years

- If outside US less than 24 hours, do not include
  - e.g. lunch at Niagara Falls
- Do not count the departure or return date
  - e.g. 10/01/2018 to 10/15/2018 = 13 days

- 3 months residence in the CIS district or State where applying for naturalization
  - Definition at INA § 101(a)(33)
    - Place of general abode
    - Principal, actual dwelling place, without regard to intent
  - All five boroughs, Long Island, and Westchester are one district, so can move within area

- English language exam: written and spoken
  - Test requires applicant to read an English sentence aloud, write an English sentence that is dictated, and answer questions in English about information in the application
  - Can get exemption due to disability or if long term LPR and at least 50 years old
    - If exempt from language requirement, there is no writing or reading test. Interview and civics exam will be conducted in your language of choice
    - No exemption due to illiteracy/inability to read/write



- For long term LPRs
  - 55/15 Rule: at least 55 years old and 15 years of LPR at time of applying
  - 50/20 Rule: at least 50 years old and 20 years of LPR at time of applying
- How to accommodate uncommon languages?
  - Give USCIS an heads-up in cover letter. NY offices are pretty good at accommodating
  - Bring own interpreter

- Knowledge of US History/Civics
  - Tested by asking 10 of 100 questions. Need to answer 6 correctly to pass.
  - Current applicants will take the 2008 version
  - If language exempt, can take civics exam in preferred language
  - Applicants that are 65 years old and have 20 years of LPR status get simplified test (only 20 questions to study)





- Written request to waive English/Civics exam because of physical or mental impairment
- Must demonstrate **NEXUS** between condition and inability to learn English/Civics
- Form must be completed by licensed MD, Doctor of Osteopathy or Clinical Psychologist, in layman's terms because it will be adjudicated by USCIS officer
- Old age or illiteracy alone is not enough, but dementia or depression might be
- N-648 must have been filled out less than 6 months at time of submission

## **Good Moral Character (GMC)**

- INA § 101 (f), INA § 318
- Need to demonstrate GMC during 5 yrs/3yrs
- Most important part of the analysis because the applicant's entire life will be up for review
- Factors that affect GMC are generally:
  - Criminal history
  - Tax history
  - Immigration history/fraud
  - Marriages/Children
  - Voting issues

- How LPR obtained status?
- Watch out for red flags
  - Short term marriages to petitioning spouse
  - Children outside marriage
  - Short term employment at petitioning employer
- Was there any fraud in immigration process?  
Might be discovered and jeopardize applicant's status.

**I. Is the applicant removable/deportable?**

See grounds of deportability at INA § 237, including:

- Criminal convictions\*
- Alien smuggling
- Illegal voting
- False claims to USC
- Abandonment of LPR status
- Any fraud/misrepresentation in past applications
- Inadmissible at time of entry/adjustment (INA § 237(a)(1)(A))

\*Very complex subject. Please feel free to contact me for more in-depth discussion.

## **2. Are there any bars to demonstrating GMC?**

a) Permanent Bars to GMC: Murder, aggravated felonies after 11/29/1990, persecution, genocide, torture of others

b) Conditional Bars (for acts during statutory period of 3/5 years)

- Certain criminal convictions/conduct. Ex Probation
- Habitual drunkard (watch out for DUIs) & illegal gambling
- Alien Smuggling
- False testimony under oath in seeking immigration benefit
- Failure to support dependents & adultery
- Unlawful acts: illegal voting, false claim to USC, failure to file income tax returns, failure to register for selective service

### **3. Likelihood that applicant will demonstrate GMC?**

- Conduct outside statutory period still counts (to negate rehabilitation for example), but cannot be sole reason to deny. See *Santamaria Ames v INS*, 194 F.3d 883 (9th Cir 1996) and *Petition of Zele*, 140 F.2d 773 (2d Cir 1948).
- USCIS will do balancing test: negative GMC factors v. positive ones. Determined on a case by case basis.
- If not removable, then only risk denial of application (time & money) and can apply again later if denied (accumulate clean statutory period).

- 8 CFR § 316.10 (c)(1)
- Probation/Parole will not preclude applicant from demonstrating GMC...BUT
- USCIS will not grant if still on parole/probation
- Probation/parole means there's a criminal conviction that could trigger deportability.
- Even if probation/parole is over, USCIS might take into account (balancing factors).

- An applicant shall be found to lack good moral character if during the statutory period was involved in the smuggling of a person...  
8 CFR § 316.10(b)(2)(viii)
- Conviction not required. Paying a coyote or encouraging illegal entry is enough
- Alien smuggling makes someone deportable
- Also, is a ground of inadmissibility. Even if this is waived, still precludes from showing GMC.



## **Failure to Pay Child Support**

- Unless the applicant establishes extenuating circumstances...shall be found to lack good moral character if, during the statutory period...[w]illfully failed or refused to support dependents. 8 CFR § 316.10(b)(3)(i)
- Key is willful and extenuating circumstances such as unemployment and financially unable to pay. Also, cannot locate family or refuses child support.
- If providing support, be ready to show proof.

- 8 CFR § 316.10(b)(3)(iii): catch-all provision for “unlawful acts” that are not covered by statute but reflect on GMC.
- *“An applicant who has committed, was convicted of, or was imprisoned for an unlawful act during the statutory period may be found to lack GMC if the act adversely reflects on his or her moral character, unless the applicant can demonstrate extenuating circumstances. An act is unlawful if it violates a criminal or civil law of the jurisdiction where it was committed. The provision addressing ‘unlawful acts’ does not require the applicant to have been charged with or convicted of the offense.”*

## **Other Unlawful Acts: Examples**

- **Fraudulent receipt of public benefits**
  - Not reporting earning accurately or extensive travel abroad while on welfare
- **Failure to file and/or pay income taxes when obligated**
  - Self-employed still required to file taxes
  - Watch out for married head of households
  - If owes taxes, needs to be on payment plan

## **Other Unlawful Acts: Examples**

- Failure to register with Selective Service
  - All males between 18-26 must register (including undocumented males)
  - If willfully & knowingly refuses, no GMC

- False claim to USC after **9/30/1996 = deportable**
  - Narrow statutory exception for LPR children that reasonably believe they were USCs
  - Policy exception for minors who were under 18 and lacked capacity to understand
- Unlawful voting:
  - If voted and claimed USC on voting registration, alien is deportable unless exception applies under INA § 212(a) or § 237(a)
  - Adjudicator may apply prosecutorial discretion not to issue NTA
  - If no NTA, must decide GMC via balancing test

## Loyalty Oath

- Everyone must take oath swearing allegiance to the constitution and loyalty to the U.S.
- Exception for people with a disability that makes it impossible to understand oath
- Modified oath for religious reasons or conscientious objectors to war
  - Need letter documenting religious belief
  - Will give modified oath



## **How to Apply for Naturalization**

- Fill out form N-400
- Copy of front & back of green card
- 2 passport pictures if name change desired
- Fee of \$725 or fee waiver request (form I-912)
- If applying as spouse of USC, need to submit proof of marriage and living in marital union or VAWA exception
- Copies of all current and previous marriage and divorce certificates/judgments
- Copies of all certificates of disposition to document criminal history

- Filing Fee for N-400 is \$640 plus \$85 Biometrics Fee = \$725
  - Applicants over age 75 do not pay \$85 Biometrics Fee
  - Military applicants (INA §§ 328, 329) do not pay fee
- Payable by money order, personal check or cashier's check or credit card (Form G-1450)



- Form I-912
- Fee waiver available if:
  - Applicant (or spouse or head of household) receives a means-tested benefit
  - Household income at or below 150% of Federal Poverty Guidelines (see Form I-912P for current FPG)
  - Financial Hardship (eg, unemployment, eviction, homelessness, medical expenses)

- Only need to show eligibility under one category
  - ie, if applicant receives SNAP or Medicaid (means-tested benefits), you do not need to show household income or financial hardship
- Must include documentation with fee waiver request
  - If means-tested benefit, Medicaid or HRA letter showing current receipt of benefits

## Naturalization Process

- Two to three weeks\* after submission: USCIS will issue notice with **receipt** number (use to check status online)
  - Longer if you are requesting a fee waiver
- One month later: applicant will be scheduled for **biometrics appointment** (fingerprints and photo)
- At **Interview** (within 6–12 months of application):
  - Review N-400 and original documents
  - English/Civics test
- **Oath Ceremony**: applicant takes oath of allegiance and becomes a USC!

- Officer will review the N-400 form
  - update form at interview (eg, trip outside US, marriage, new kid, arrests)
- Review of original documents: birth/marriage certificates, dispositions, tax returns, passports, LPR card
- Officer might request additional evidence
- Unlikely to get a decision on the spot

- **English/Civics Test:** If applicant does not pass at the first interview, will be called for second interview to try again. If they fail second time, N-400 will be denied.

## Oath Ceremony

- If approvable, USCIS will send applicant an Oath Ceremony appointment
- **Applicant does not become a citizen until oath taken**
- Must disclose any changes at time of oath (fill out form on reverse of oath ceremony notice)
- If arrested between interview & oath, might change eligibility
- Must surrender green card, but will receive certificate of naturalization
- If applicant changed name on N-400 form, not valid until oath taken. Naturalization certificate will serve as proof of name change.

- As of June 24, 2022:
  - Brooklyn: 15.5 months
  - Queens: 15.5 months
  - Manhattan, Bronx, Staten Island, Westchester: 14 months
  - Long Island: 14.5 months
  - Newark: 16.5 months

- If denied, can re-file or request a hearing on the decision



[www.uscis.gov](http://www.uscis.gov)

[USCIS Policy Manual, Volume 12: Citizenship &  
Naturalization](#)

[Citizenship Resource Center](#)

[Naturalization Interview & Test Videos](#)



**Thank you**

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